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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/712,477	11/13/2003	Rodolphe Marsot	704-011551-US (PAR)	8320

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EXAMINER
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BLOUNT, STEVEN

ART UNIT	PAPER NUMBER
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2661

DATE MAILED: 03/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/712,477

Applicant(s)

MARSOT, RUDOLPHE

Examiner

Steven Blount

Art Unit

2661

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 05 November 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1 - 23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 22 - 23 is/are allowed.
- 6) ☒ Claim(s) 1 - 21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Claim Objections***

1. Claim 1 is objected to because of the following informalities: in line 1, the word "messag" should be replaced with – message --. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 3, 8, 11, 12, and 13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 3, line 4, "the retrieval module" lacks antecedent basis. In line 2, there is no antecedent basis for an analysis module.

In claim 8, there are not "different modules" in claim 1.

In claim 11, the "retrieval module" lacks antecedent basis.

In claims 12 – 13, the "interception module" lacks antecedent basis.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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4. Claims 1, 4 – 19, and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over the Applicants Admitted Prior Art (hereinafter AAPA) in view of U.S. patent application publication US 2004/0097248 to Schmidt et al.

AAPA discusses, on pages 1+ of the specification, that in the prior art, in load tests of http servers, no information is obtained on the time limits for the transmission of multimedia messages (page 2, line 4), and that it is impossible to determine the types of messages lost. AAPA does not, however, teach a solution to this problem to comprise inserting information about the message produced into the subject field of the multimedia message, wherein this information can be used to benchmark the system performance while the system is stressed. AAPA does also does not teach producing the media message automatically.

Schmidt et al teach inserting, at the user, information on the multimedia message in a subject field for the purpose of “simplifying checking of data transmission” (page 1, par 3). See page 2, par 40, page 3, par 52, par 55, and par 58, and note that the information which is inserted is shown in figure 2, this information including delivery time and content type.

The examiner takes Official Notice that stress tests (loading) on systems are often carried out automatically and on a regular basis, such that it would be obvious to one of ordinary skill in the art to have the multimedia message generated “automatically”.

It would have been obvious to one of ordinary skill in the art at the time of the invention to have inserted benchmark information including delivery time and content

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type into the subject fields of the multimedia messages taught in AAPA during the test loading, in light of the teachings of Schmidt et al, and to have the multimedia messages generated automatically, in light of the Official Notice taken, in order to provide a method of automatically load testing the passage of multimedia messages through a system without the necessity of adding additional equipment to the system.

With regard to claim 4, see page 2, par 29 where MMS is taught.

With regard to claim 5, SMS is taught in par 1 and 29, and would be an obvious choice to carry the information due to its efficient nature.

With regard to claim 6, WAP is taught in par 30 and 83.

With regard to claim 7, note delivery time in figure 2.

With regard to claim 8, it would be obvious to synchronize the modules of Schmidt et al.

With regard to claim 9, although the use of a checksum is not one of the fields shown in figure 2, it is noted that since it is, as noted above, an object of the invention to provide a means for checking the data, the use of a checksum (a well known error checking procedure) would be obvious in this context to one of ordinary skill in the art.

With regard to claim 10, see the transaction ID field in figure 2.

With regard to claim 11, see the link flag in figure 2.

With regard to claim 12, the member 6 in figure 1 is an "interception module".

With regard to claim 13, note the use of short messaging above.

With regard to claim 14, variable size is indicated by the content size field.

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With regard to claim 15, it is noted that the automatic and regular stress testing of a system would result in the messages being sent at a given frequency.

With regard to claim 16, see the discussion of time limit above, and also the delivery time field in figure 2.

With regard to claim 17, paragraph 53 states that different types of MM messages can be sent.

With regard to claim 18, see the discussion of claim 1 with respect to the notification messages.

With regard to claim 19, see the input facility in paragraph 80.

With regard to claim 21, the generation of the values inserted into the subject fields is carried out using a mutiprocess software architecture.

5. Claim 20 is rejected under 35 U.S.C. 103(a) as being obvious over Applicants Admitted Prior Art (AAPA) in view of U.S. patent application publication US 2004/0097248 to Schmidt et al as applied to claims 1, 4 – 19, and 21 above, and further in view of US patent application US 2002/0087549 to Mostafa.

AAPA/Schmidt et al teach the invention as described above, but do not teach having the generation module parameterized through a scenario file. This is taught in Mostafa. See page 7, paragraph 113 ("presentation description"). It would have been obvious to one of ordinary skill in the art at the time of the invention to have had the generation module parameterized through the use of a scenario file, in light of the teachings of Mostafa, in order to provide a simple means for determining which values will be used to determine the output of the loading test.

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6. Claim 3 would be allowable if rewritten to include the limitations of the base claim and any intervening claims, and if the 112 second paragraph rejections were overcome.

Claims 2 and 22 – 23 are allowed.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven Blount whose telephone number is 571 - 272 - 3071. The examiner can normally be reached on M-F 9:00 - 5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Chau Nguyen, can be reached on 571 – 272 - 3126. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
**Ajit Patel**  
Primary Examiner

SB

  
2/02/2005